IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6037 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHOGHA GRAM PANCHAYAT

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 6037 of 1997

MR HS MUNSHAW for Petitioner No. 1

MR DS VASAVADA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 18/10/2004

ORAL JUDGEMENT

Heard learned advocate Mr.H.S.Munshaw on behalf of the petitioner and learned advocate Mr.D.S.Vasavada for respondents - workmen.

#. In the present petition, the petitioner Panchayat has challenged the award made by the Labour Court, Bhavnagar in Reference LC Demand No.3 / 1988 dated 9th October, 1996, whereby the labour court has granted benefit of permanency with effect from 1st April, 1985 in favour of eleven workmen and one Mukadam - Ramaji Jiva. The labour court has also granted Rs.36,000/- for interim period from 1.4.1985 to 31.3.1996 as lumpsum arrears and allowance of salary. The pay scale granted with effect from 1st April, 1996, salary should be paid in the lowest scale of Rs.750-940 to all the workmen. The labour court has also granted Rs.10/- towards washing allowance in favour of Mukadam Ramjibhai Jivabhai.

#. Learned advocate Mr.Munshaw has submitted that the labour court has committed gross error inasmuch as all these eleven workmen are Safai Kamdar and one Mukadam are part time appointed employee purely on temporary and adhoc basis without following due procedure and recruitment without getting any sanction from the competent authority and therefore, the Panchayat had to pay from their own funds. Learned advocate Mr.Munshaw also submitted that Panchayat is not able to bear the burden as directed by the labour court granting benefit of regularisation and permanency and other benefits. Learned advocate Mr.Munshaw has also submitted that the labour court has committed gross error in granting certain benefits in favour of these Safai Kamdar.

#. Learned advocate Mr.D.S.Vasavada for the respondents has supported the award passed by the labour court, Bhavnagar.

#. I have considered submissions made by the learned advocates for the parties and also perused the award in question passed by the labour court, Bhavnagar. Considered the dispute raised by the Union. The respondent Union has filed statement of claim vide Exh.3 and petitioner Panchayat has filed reply vide Exh.9. Certain documents were produced at Exh.8 and workmen were examined at Exh.16 & 17. Thereafter, the labour court has examined the oral evidence as well as documentary evidence and come to the conclusion that the workmen who are working since many years for more than ten years and each day put in service of eight hours, even though they were not paid just and proper salary and therefore, considering the entire record, the labour court has granted certain benefits of regularisation / permanency and other benefits of the scale. The labour court has not given retrospective effect while granting benefit in

favour of the respondent workmen. The labour court has also considered financial position of the Panchayat but unfortunately, the Panchayat has not produced any material to disclose the financial condition of the Panchayat. However, the labour court has taken care while granting the benefit in favour of the workmen. The labour court has come to the conclusion that no proper salary was paid to the workmen inspite of availing eight hours work from the workmen which amounts to unfair labour practice adopted by the State Authority. The labour court has taken more care about actual benefits with effect from 1st April, 1996 and Rs.36,000/- lumpsum amount which required to be paid by the Panchayat to all twelve workmen for the period from 1st April, 1985 to 31st March, 1996. Therefore, the labour court has taken sufficient care to see that no financial burden is levelled against the Panchayat and benefit has been granted with effect from 1st April, 1996. Amount of Rs.36,000/-has been awarded in three installments in favour of the respondent workman. Therefore, according to my opinion, the labour court has rightly examined the matter and relied upon the evidence which are on record and for that, the labour court has not committed any error which requires no interference by this Court while exercising the powers under Article 227 of the Constitution of India. It is necessary to note that various contentions raised by the Panchayat in written statement but no oral evidence has been led before the labour court by the Panchayat. The labour court has also considered whether the workmen were part time or full time and for that, the labour court has relied upon oral evidence of the workmen concerned. But as such, no evidence was led by the Panchayat against the evidence of the workmen. Therefore, the labour court has come to the conclusion that it is clear case of exploitation by the public body and considering the entire facts and circumstances of the case, work of eight hours in a day availed from each workman and receiving only salary of Rs.105/- whereas the permanent workman was receiving Rs.1200/- per month. The labour court has also considered the length of service of each workman which is more than ten years even though they were not getting proper and adequate minimum salary from the Panchayat. Therefore, according to my opinion, the labour court has not committed any error while passing such award. As such, there is no procedural irregularity committed by the labour court and there is no infirmity pointed out by the learned advocate Mr.Munshaw and therefore, considering the entire facts and circumstances of the case and also keeping in mind the important aspect that at the time of issuing Rule, this Court has not granted

any stay against the award in question. As a result thereof, the award in question is required to be implemented by the petitioner. Thus, Rule issued by this Court on 29th August, 1997 and award in question has not been stayed by this Court. The Award in question remained in existence without any stay for more than seven years and therefore, this is also one of factors not disturbing the award passed by the labour court, which, in my opinion, is just and proper award giving proper wages to the workmen working for more than ten years with petitioner Panchayat. There is no doubt that the view taken by the Apex Court in case of Gujarat Agricultural University v. Labhu Bechar Rathod, AIR 2001 SC 706, seems to have been followed by the labour court while granting the benefit to the respondents.

This Court has also considered the reply filed by the respondents and considering the entire facts and circumstances, in my opinion, there is no substance in the present petition.

In view of discussion, present petition fails and the same is rejected accordingly.

Rule is discharged with no order as to costs.

Date : 17.10.2004 [H.K.Rathod, J.]
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